**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

Special Civil Application Nos. 6737 and 6748 of 2011

Decided On: 02.06.2011

Appellants: **Jain Rachnakumari Vimalchandra and 2 Ors.**
**Vs.**
Respondent: **State of Gujarat and 4 Ors.**

**Hon'ble Judges/Coram:**
J.B. Pardiwala, J.

**JUDGMENT**

**J.B. Pardiwala, J.**

1. As common question of facts and law are involved in both these petitions, they are disposed of by this common judgment.

2. RULE returnable forthwith. Ms. Monali Bhatt, learned AGP for the State waives service of rule.

3. The grievance redressed by the Petitioners is with regard to the decision of the Respondents in not accepting their application forms online for appearing in the Teacher Eligibility Test (TET, for short), which is scheduled to be conducted on 12th June 2011.

4. All Petitioners cleared their graduation with the subject of Social Science. All these Petitioners are aspiring to be appointed as Primary Teachers based on their qualifications. The appointment on the post of Primary Teachers is regulated in accordance with the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and the guidelines in the form of notifications issued by the National Council for Teachers' Education in that regard from time to time. The NCTE has laid down the minimum qualifications for a person to be eligible for appointment as a teacher in Class-I to Class-VIII in a school, including qualifications of passing out the TET.

5. My attention has been drawn to a circular issued by the NCTE on 11th February 2011, whereby the guidelines are prescribed for conducting TET, which is to be conducted by appropriate Government. The guidelines issued by the NCTE in Notification dated 23rdAugust 2010 applicable in the case of the present Petitioners can be reproduced as under:

(ii) Classes VI-VIII

(a) B.A./B. Sc. and 2-year Diploma in Elementary Education (by whatever name known)

OR

B.A./B. Sc. with at least 50% marks and 1-yearBachelor in Education (B. Ed.)

OR

B.A./B. Sc. with at least 45% marks and 1-year Bachelor in Education (B. Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor in Elementary Education (B. El. Ed.) OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year B.A./B. Sc. Ed or B.A. Ed./B. Sc. Ed.

OR

B.A./B. Sc. with at least 50% marks and 1-year B. Ed. (Special Education)

AND

(b) Pass in the Teacher Eligibility Test (TET),to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for the purpose.

6. Subsequently, as a consequence of this notification, a further circular has been issued dated 11th February 2011 by the NCTE, laying down guidelines for TET, the same is reproduced herein as under:

Eligibility

5. The following persons shall be eligible for appearing in the TET:

i. A person who has acquired the academic and professional qualifications specified in the NCTE Notification dated 23rd August 2010.

ii. A person who is pursuing any of the teacher education courses (recognized by the NCTE or the RCI, as the case may be) specified in the NCTE Notification dated 23rd August 2010.

iii. The eligibility condition for appearing in TE Tmay be relaxed in respect of a State/UT which has been granted relaxation under Sub-section(2) of Section 23 of the RTE Act. The relaxation will be specified in the Notification issued by the Central Government under that Sub-section.

7. It appears that the Respondents have decided to conduct TET on 12th June 2011 of only those applicants who have graduated, specializing in the following subjects:

(1) Maths

(2) Science

(3) English

(4) Hindi

(5) Sanskrit

(6) Gujarati

8. It appears that for some reasons the Respondents have decided not to accept the application forms online of all those candidates who have graduated with Social Science as one of the main subjects. This omission on the part of the Respondents have created a problem, as a result of which, these petitions have been preferred.

9. I have heard learned Counsels Mr. Paresh Upadhyay and Mr.B.P. Gupta for the Petitioners and Ms. Monali Bhatt,AGP for the Respondents.

10. Learned Counsels for the Petitioners would submit that the action and the decision on the part of the Respondents in not accepting the application forms of the Petitioners who have graduated with Social Science as the main subject is absolutely illegal, arbitrary and discriminatory in nature. There is no justifiable reason for the Respondents to omit the applicants. They would submit that the TET could have been conducted for all subjects and there is no reason to omit the subject of Social Science.

11. Per contra, learned AGP Ms. Bhatt submitted that while taking the decision of not accepting the application forms online of all those candidates who have cleared their graduation with Social Science as the main subject, the authorities were of the view that first priority should be given to all those candidates who have cleared their graduation with the subjects of Maths, Science, English, Hindi, Gujarati and Sanskrit as the main subject. It is further submitted that the authorities are of the view that they do not require primary teachers with the subject of Social Science as their main subject immediately and, therefore, they have been omitted from appearing in the TET. According to her, there is no discrimination and the petitions should not be entertained.

12. On 31st May 2011,this Court passed the following order:

Taking into consideration the fact that Teacher Eligibility Test is going to be conducted on 12¬6-2011 and the last date for accepting forms Online is 2-6-2011, the Respondents are directed to file reply, explaining as to why the subject of Social Science has been omitted from the advertisement dated 21-5-2011 and if at all the Respondents are justified in omitting the subject of Social Science, then when they propose to issue a fresh advertisement for conducting Teacher Eligibility Test for the subject of Social Science.

Notice returnable on 2-6-2011. Ms. Monali Bhatt, learned Assistant Government Pleader waives service of Notice for Respondent Nos. 1,2 and 3. Direct service for rest of the Respondents is permitted.

13. Pursuant to the order dated 31st May 2011,affidavits-in-reply have been filed by the Secretary, State Examination Board, State of Gujarat,Gandhinagar and the Director of Primary Education, State of Gujarat, Gandhi agar.

14. In the affidavits-in-reply filed by both the Respondents, they have tried to justify the omission of the subject Social Science so far as the TET to be conducted on 12th June 2011 is concerned. However, in paragraph 7 of the affidavit-in-reply of the Director of Primary Education, State of Gujarat, Gandhi agar, it has been stated as under:

I say that Teacher Eligibility Test (TET) for subject of Social Science in Higher Primary Education will be conducted within three months after completion of entire examination procedure of the present Teacher Eligibility Test (TET).

15. Having considered the rival contentions of the respective parties, prima facie, I am of the opinion that the decision of the Respondents in not accepting the application forms online of the Petitioners and other similarly situated candidates who have graduated with Social Science as the main subject does not appear to be just and proper. Teacher Eligibility Test is somewhat like an open entrance test. Based on the result of the TET, ultimately, as and when vacancies arise, appointments to the post of Primary Teachers are given. I can understand that the candidates may not have any say so far as the appointment is concerned. But, at least, the Respondents ought to have permitted them to appear in the TET to be conducted on 12th June 2011 together with other applicants who are going to appear in the said test. The only ground appears to have been assigned in the reply is the fact that as there is no immediate need of primary teachers with the subject of Social Science as the main subject, the Petitioners and other candidates with the subject of Social Science have been omitted. Further, according to the Respondents as many candidates are going to appear in the TET, it will not be feasible to conduct the exams along with the applicants of subject of Social Science. This hardly can be a ground to keep such candidates away from the TET.

16. I could have passed an interim order today directing the Respondents to accept the application forms and permitting them to appear in the test on 12th June2011. However, learned AGP Ms. Bhatt, upon instructions from Shri R.C. Raval, Director of Primary Education, State of Gujarat, Gandhi agar and Mr.B.C. Solanki, Secretary, State Examination Board, State of Gujarat, Gandhi agar as well as Mr.F.P. Halani, Chairman, State Examination Board, State of Gujarat, who are present in the Court today, tried to explain the difficulties which they are likely to face if the Petitioners and other similarly situated candidates are permitted to appear on 12th June 2011. Further, a statement is being made today before this Court by Shri R.C. Raval, Director of Primary Education, State of Gujarat, Gandhi agar that the TET of the Petitioners and other similarly situated applicants who have graduated with Social Science as the main subject shall be definitely conducted on or before 31st August 2011. The officers who are present in the Court today have assured the Court that they shall not resile from the statement being made today. I am sure, this situation would not have arisen if little prudence would have been exercised in taking the decision. This confusion could have been easily avoided resulting in heartburning at the end of the Petitioners and other candidates.

17. In any view of the matter, since now assurance has been given by top ranking officers at the level of Secretary i.e. the Director and the Chairman of the State Examination Board that they shall see to it that the TET is conducted on or before 31st August 2011, I do not want to proceed further with the matter on merits.

18. Mr.R.C. Raval, Director of Primary Education, State of Gujarat, Gandhi agar and Mr. B.C. Solanki, Secretary, State Examination Board, State of Gujarat, Gandhi agar shall file an affidavit before this Court stating that the exam will be conducted on or before 31st August 2011 without fail. The said affidavit shall be filed within a period of one week from today.

19. Learned Counsels for the Petitioners have expressed apprehension that if the exams are not conducted on or before 31st August 2011 and in the meantime if the results of the other candidates who are going to appear on 12th June 2011 are declared and if the appointments are given thereafter to the post of Primary Teachers then this will cause grave prejudice to the Petitioners and other similarly situated candidates.

20. I do not propose to touch this issue at this stage. I keep it open for the learned Counsels to redress this grievance at appropriate stage.

21. In this view of the matter, without going into further deliberations, I deem it fit and proper to dispose of both these petitions with the above observations. I am sure, that the directions in terms of the statements shall be abided in its true letter and spirit.

22. Rule made absolute to the aforesaid extent.